IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19-12-2006

Coram :

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.16603 of 2003

Tmt.S.Radha Mony ... Petitioner

Vs.

1.The Home Secretary
Government of Tamil Nadu
Fort. St. George,
Madras - 9.

2. The Commissioner of Police
Madurai City, Madurai.

3. The Inspector of Police
B-9, S.S.Colony Police Station,
Madurai.

4. The Sub Inspector of Police
B-9, S.S.Colony Police Station,
Madurai. .. Respondents

Writ petition is filed under Article 226 of the Constitution of India praying for a writ of mandamus, directing the CBI or CBCID to investigate the Cr.No.24/02 on the file of the Inspector of Police, B9, S.S.Colony Police Station, Madurai.

For Petitioner : Mr.V.Bhiman
For Respondents : Mr.P.Subramanian, GA

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O R D E R

(Order of the Court was made by S.TAMILVANAN, J.)

The writ petition seeking mandamus, directing CBI or CBCID to investigate the case, that was registered in Cr.No.24/02 on the file of the Inspector of Police, B9 S.S. Colony police station, Madurai

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has been preferred by the petitioner, mother of K.Ramesh Kumar and mother-in-law of Gayathri, who died on 06.01.2002 under mysterious circumstances.

2. Heard, Mr.V.Bhiman, learned counsel for the petitioner and Mr.P.Subramanian, learned Government Advocate for the respondents.

3. According to the petitioner, on 07.01.2002, while herself and her husband had been to their native place, in Kerala, received information that her son Ramesh Kumar and his wife Gayathri had expired. Immediately, she rushed to Madurai, along with her husband, but she was not permitted to have a glimpse of the dead bodies of her said son and daugter-in-law, though the dead bodies were kept in the mortuary of the Hospital.

4. Learned counsel for the petitioner drew the attention of this Court to the FIR, registered by the police, wherein it is stated that on 07.01.2002, till 8 a.m., the ground floor portion of the house was found locked outside and hence, Karthikeyan, brother of the deceased Gayathri, on hearing the weeping sound of Reshma, female child of the deceased, aged about 2 ½ years, from the house, immediately, with the help of neighbours, by using Hacksaw blade, cut and removed the lock and thereby went inside the ground portion of the house, where they found Ramesh Kumar and Gayathiri lying dead. On the complaint given by the brother of the deceased Ramesh Kumar, the case in Cr.No.24 of 2002 was registered by police, under Section 174 of Cr.P.C. and subsequently on the final report filed by the third respondent herein before the Tahsildar, Madurai South, the case was closed.

5. According to the learned counsel for the petitioner, a case of homicide has been closed as suicide, without proper investigation. The very pertinent question raised in this case, is as to how was it possible for the deceased to commit suicide in the ground portion of the house, when it was found locked outside.

6. In view of the aforesaid suspicious circumstance, the petitioner has stated in her affidavit at paragraph number 14 as follows, " The Door of the house was locked, outside even as per FIR and hence there is no possibility that the persons have committed suicide." As per the sketch and observation mahazar, prepared by the police and the statement of mahazar witnesses recorded under Section 161 Cr.P.C, no other entrance, except the door which was found locked is stated and hence, it could not be possible for the deceased to enter into the locked room with the child for committing suicide. Had the door not been locked by the deceased, it could have been investigated and stated in the counter filed by the respondents or in the final report that, by whom, the door was locked outside, what was the nexus for the occurrence and the person who locked the door,

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but the same was not investigated.

7. In the counter affidavit filed by the respondents, only the following reply is available, for the vital suspicious circumstance, " The locked door of the deceased was opened by Karthikeyan, the brother of deceased Gayathri with the help of Ganapathi." There is no explanation in the counter, as to how the ground portion of the house was found locked outside.

8. We are of the considered view that the aforesaid reply given in the counter affidavit would not be a proper and satisfactory reply, for the aforesaid vital suspicious circumstance. In the final report, filed by the third respondent, before the Tahsildar, there is no reply for the scene of occurrence having been found locked outside, before the mysterious death was noticed.

9. On a perusal of the seizure mahazar available in the case file, it is seen that four material objects were recovered at the scene of occurrence on 07.01.2002, by the Investigating Officer in the presence of witnesses. The first item is stated as Hacksaw blade, measuring 1 feet x 1 inch. The second item of the recovered material object is the alleged lock, said to have been found at the scene of occurrence, but strangely in the description of the property, nothing has been stated that it was found cut by Hacksaw blade. In the description of the lock, it has been stated that the lock was found in silver colour, though inside portion of the same was made up of bronze, measuring 6 x 6 cm in square shape and the other side was in round shape, at one side at about 2.5 cm diameter, containing numbers 1 to 8, with letters ' Yalk Aligarh 17 levs ', 7 years guaranteed; extra power with double plated body - G. The said description about the lock is available even in the observation mahazar. Though the Investigating Officer has given so many details about the lock found at the scene of occurrence, he has not stated anything about the alleged cut and removal of the lock. Had the lock was found cut by hacksaw blade and removed, in order to open the door, it could not have been left out in the description of the said material object, strangely, neither in the seizure mahazar, nor in the observation mahazar or in the statement of the witnesses to the mahazar, recorded under Section 161 of Cr.P.C, the symptom for the alleged cut and removal of lock has been stated. There is no explanation in the final report on the aforesaid vital aspect.

10. It is seen that there is no date or month in the counter affidavit filed on behalf of the respondents and from the court seal, it is seen that the same was filed on 01.03.2004.

11. As per the final report, the deceased with the intention to commit suicide had obtained Mirinda and mixed the same with poison. Had it been so, as per normal conduct of any person, they would not

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have left their 2 ½ year old child, abruptly, either they could have entrusted the child to some other person, stating some reason, before committing suicide, or they could have administered poison to the child also, since they were fed up with their life. The theory of committing suicide by the deceased in a locked room, leaving 2 ½ year old child abruptly creates serious suspicion and as such on the facts and circumstances, we are of the considered view that the real facts were not brought to light by proper investigation.

12. As per the case, a suicide note in Malayalam was found at the scene of occurrence, stating that one Manikandan and O.M.S.Raja were liable to pay the deceased Ramesh Kumar, a sum of Rs.6,00,000/- and Rs.3,00,000/- respectively and he had to pay Rs.2,00,000/- to one Mannan and Rs.1,50,000/- to one Raman and as he could not collect the aforesaid amount from his said debtors and discharge his debts, they decided to commit suicide. In the counter affidavit filed by the respondents, it has been stated in paragraph number 8 as follows, "It is submitted that the petitioner states that Manikandan and O.M.S.Raja have to pay to her deceased son Rs.6 lakhs and 3 lakhs respectively. This information has found in the suicide note of the deceased. But there is no explanation about the mode of transaction how it was obtained and how it was given to the above said party. This is under investigation."

13. It is seen in the final report, that there is no detail available about the investigation done in the suicide note. Similarly, in the counter affidavit, it has been further stated that there was no clear evidence that the deceased was using cellphone and the number of cellphone was also not disclosed, even by the petitioner and that it would be probed further.

14. On a perusal of the statement of one Tirupathi Venkatesah found at page number 5 of the type set available in the case file, it is clear that he had informed the cell phone number of the deceased Ramesh Kumar as 7842134700. He has also given certain other details, but, in the counter affidavit filed by the respondents, it has been stated; "There is no clear evidence to show that the deceased was using cell phone and number of the cell phone is not disclosed even by the petitioner. It will be probed further". In the final report filed by the third respondent, nothing has been stated about the missing of the cell phone belongs to the deceased Ramesh Kumar.

15. The petitioner has stated in her affidavit in paragraph number 12 thus "On 08.01.2002, I phoned up to the proprietor of Gold Winner Company by name 'Peria Annachi' father of Arun and informed them about the death of my son on 07.01.2002, he immediately quipped that my son had resigned three months back and when I insisted on the date and other particulars, the telephone connection was cut-off. This has created a doubt in my mind that these people along with

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Manikantan who is the main dealer at Madurai might be the reasons for the death of my son and daughter-in-law" .

16. For the above said allegation, the second respondent has stated in the counter filed for the respondents as follows : " The deceased Ramesh Kumar has been working as Sales Representative. He has been terminated from the company on 08.12.2001 as per the version of the General Manager of Kaleeswari Refinery Private Limited, Chennai".

17. It is seen from the counter that the termination of the deceased Ramesh Kumar had been decided by the Investigating Agency only on the version of the General Manager of Kaleeswari Refinery Private Limited and a perusal of the final report would reveal that they have not verified the relevant records of the company, in order to find out the truth, with regard to the alleged termination of service of the deceased Ramesh Kumar, before the date of his death.

18. It is seen from the letter, dated 05.08.2003, available in the case file addressed by the Assistant Commissioner of Police, Thilagarthidal (L&O) Range, Madurai City to the Commissioner of Police, Madurai City, that the Assistant Commissioner had informed that the service of the deceased Ramesh Kumar, as sales executive in Gold Winner Refinery Limited had not been collected by the previous Investigating Officer, and the subsequent Investigating Officer was instructed by him to verify the same.

19. The letter of the Assistant Commissioner reveals that no termination order by the company, was served on the deceased Ramesh Kumar before his death, but intimation letter was said to have been sent only to O.M.S.Raja, Dealer of the Gold winner Oil Company. The particulars of the creditors of the deceased Ramesh Kumar could not be obtained by the investigating officer and the subsequent investigating officer was directed by him to probe the same. As per the letter of the Assistant Commissioner, the termination order, said to have been issued by Kaleswari Refinery Private Limited, Chennai, to the deceased Ramesh Kumar had not been advertised in any newspaper and the company had also not intimated to its dealers about the termination order of Ramesh Kumar and the subsequent investigating officer was instructed by the Assistant Commissioner of Police, to verify the same.

20. We have verified that for the aforesaid queries, stated in the letter of the Assistant Commissioner, dated 05.08.2003, available at page number 311 of the case file, there is no answer anywhere in the file, including the final report, whereby the third respondent has intimated the Tahsildar, as "Action Dropped".

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21. It is seen from the case file that the writ petitioner had sent various complaints and reminders to the Commissioner of Police, Madurai City, Home Secretary and other authorities, about the mysterious death of her son Ramesh Kumar and daugher-in-law Gayathri, stating that homicide has been converted as suicide at the intervention of some influential persons,in spite of the same a cryptic final report, dated 03.09.2004 has been filed by the third respondent to the Tahsildar, Madurai South, stating "Action Dropped" and thereby the case has been closed.

22. Considering the facts and circumstances and the case file in detail, we are of the considered view that the investigation was not properly done by the respondents 2 to 4, but for the reasons best known to them, the same has been closed, stating that the deceased committed suicide, since they frustrated in life, as they could not discharge their debts.

23. The next question before us is whether it has to be directed for the investigation of CBI or CBCID, as sought for by the petitioner.

24. The following decisions were considered for deciding the legal aspect.

1. Rajesh v. Ramdeo reported in (2001) 10 SCC 759.
2. The Government of Tamil Nadu v. V.Muthulakshmi reported in 2006 (2) CTC 285.
3. Secretary v. Sahngoo Ram Arya reported in (2002) 5 SCC 521
4. Aliraj Gounder v. The Inspector of Police reported in 2005 (3) CTC 673

25. In the decision Inder Singh v. State of Punjab reported in 1994 SCC (Cri) 1653, a case relating to abduction of 7 persons in the age group of 85 to 14 by senior police officer, the Honourable Supreme Court after finding that the State Police acting leisurely and in irresponsible manner, ordered C.B.I enquiry. Similarly in the other decision Kashmeri Devi v. Delhi Administration reported in 1988 SCC (Cri) 864, pertaining to death in police custody for which C.B.I enquiry was ordered. We are of the considered view that the aforesaid decisions are not applicable for the facts and circumstances of the case on hand.

26. The Division Bench of this Court in the decision Aliraj Gounder v. The Inspector of Police reported in 2005 (3) CTC 673, has held that if there is efficacious alternative remedy available, the petitioner cannot sought for transfer of investigation to C.B.I. This court relying on the decision in C.B.I v. Rajesh Gandhi reported in 1997 Crl.L.J 63, has held that an accused cannot have any right to say as to who should investigate the offence, he is charged with and

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decision to investigate or decision on agency which should investigate does not attract the principles of natural justice and that the same principle is applicable to the complainants and ordinarily complainants cannot say as to which agency should investigate an alleged criminal offence.

27. In the decision Secretary v. Sahngoo Ram Arya reported in (2002) 5 SCC 521, the Honourable Supreme Court has held that the High Court has power under Article 226 to direct an enquiry by CBI, and a decision to direct an enquiry by CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency.

28. The Division Bench of this Court in The Government of Tamil Nadu v. V.Muthulakshmi reported in 2006 (2) CTC 285, by referring various decisions of the Apex Court and this Court has held that unless materials placed before this Court disclose a prima facie case calling for an investigation by C.B.I, or any other similar agency, the same cannot be done as a matter of routine or merely on the basis of some allegations made by a party.

29. In the light of the decisions referred above, we are satisfied that the materials available on record in this case do not disclose a prima facie case, calling for investigation by CBI. But, on the other hand, we are of the considered view, as discussed earlier that the case has been investigated leisurely and in an irresponsible manner by the investigating agency, as held by the Apex Court in the decision reported in 1994 SCC (Cri) 1653, in spite of various representations and reminders sent by the petitioner to the respondents and other authorities, raising serious suspicious circumstances, on the mysterious death of her son and daughter-in-law and the case has been abruptly closed in a casual manner. Therefore, on the facts and circumstances of the case on hand, we are of the considered view that to meet the ends of justice, prima facie materials are available for ordering further investigation by CBCID of the State.

30. In the result, the writ petition is allowed, directing the CBCID of the state to investigate the matter, and take further action according to law. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Home Secretary
Government of Tamil Nadu
Fort. St. George,
Madras - 9.

2. The Commissioner of Police
Madurai City, Madurai.

3. The Inspector of Police
B-9, S.S.Colony Police Station,
Madurai.

4. The Sub Inspector of Police
B-9, S.S.Colony Police Station,
Madurai.

5.The Superintendent of Police,
(Head Quarters)
CBCID, Omanthurar Estate, Chennai-2.

+1cc to Govt. Pleader Sr 63563
+1cc to Mr.V.Bhiman, Advocate SR 63793

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km/23.1.

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